

Exhibit H

In the Matter Of:

*EDWARD ALAN YEARTA vs
AMUSEMENTS OF AMERICA
2:17-cv-2117*

*DOMINIC VIVONA
September 20, 2018*



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30(b)(6)
Dominic Vivona - September 20, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

EDWARD ALAN YEARTA,)	
)	
Plaintiff,)	
)	
VS.)	Civil Action No.:
)	2:17-cv-2117
AMUSEMENTS OF AMERICA,)	
INC.; DELTA FAIR, INC.;)	
UNIVERSAL FAIRS, LLC;)	JURY DEMAND
and BELLE CITY AMUSEMENTS,)	
INC.,)	
Defendants.)	
AMUSEMENTS OF AMERICA,)	
INC.,)	
)	
Crossclaim Plaintiff,)	
VS.)	
)	
BELLE CITY AMUSEMENTS,)	
INC.,)	
)	
Crossclaim Defendant.)	

VIDEOTAPED RULE 30(b)(6) DEPOSITION

OF

DOMINIC VIVONA, JR.

SEPTEMBER 20, 2018

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<p style="text-align: right;">26</p> <p>1 Incorporated.</p> <p>2 MR. TEITENBERG: And I'm going to</p> <p>3 hand you a copy of that. I have provided</p> <p>4 everyone else with copies earlier today, but I</p> <p>5 still have a few extra if anyone needs it. This</p> <p>6 will Exhibit 3, I guess.</p> <p>7 MS. TULLIS: Going to be number 1,</p> <p>8 right?</p> <p>9 MR. MAST: Three.</p> <p>10 (Whereupon, the above-mentioned document</p> <p>11 was marked as Exhibit 3 to the testimony of the</p> <p>12 witness, and is attached hereto.)</p> <p>13 BY MR. TEITENBERG:</p> <p>14 Q. Are you familiar with this document?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know who drafted this document?</p> <p>17 A. Someone at Delta Fair.</p> <p>18 Q. Do you have any idea who it would be at</p> <p>19 Delta Fair?</p> <p>20 A. No.</p> <p>21 Q. How do you know it was someone at Delta</p> <p>22 Fair?</p> <p>23 A. Because they sent it to me.</p> <p>24 Q. When did they send it to you?</p>	<p style="text-align: right;">27</p> <p>1 A. I mean, it's dated up here in 2016, but</p> <p>2 I'm not sure of the date.</p> <p>3 Q. Okay. I guess what I'm getting at, I</p> <p>4 didn't plow this ground with you, but it's my</p> <p>5 understanding that Amusements of America was the</p> <p>6 carnival operator from the years 2008 to 2016 for</p> <p>7 the Delta Fair?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. And do you know who drafted the</p> <p>10 original contract with Delta Fair in 2008?</p> <p>11 A. Delta Fair did. I'm not sure who it</p> <p>12 was. I'm assuming -- well, I'm assuming that.</p> <p>13 I'm not positive. I would have to see the</p> <p>14 contract.</p> <p>15 Q. Okay. And what leads you to believe</p> <p>16 that though?</p> <p>17 A. Because we have a standard boilerplate</p> <p>18 contract with terms that you fill in, and this is</p> <p>19 not that.</p> <p>20 Q. Okay. Can you tell me or tell the jury</p> <p>21 how this contract differs from A of A's standard</p> <p>22 contract?</p> <p>23 A. Ours is two pages.</p> <p>24 Q. I'm sorry?</p>
<p style="text-align: right;">28</p> <p>1 A. Two pages. So a lot more detail.</p> <p>2 Q. Is it common for a fair organization</p> <p>3 such as Delta Fair, Incorporated to draft the</p> <p>4 contract in these types of agreements?</p> <p>5 A. For larger fairs that have legal staff,</p> <p>6 yes, or access to legal staff.</p> <p>7 Q. Do you know whether with respect to this</p> <p>8 particular agreement A of A had any hand in</p> <p>9 negotiating any of its terms?</p> <p>10 A. Well, I would assume so. You're asking</p> <p>11 if we just took a contract and signed it as is,</p> <p>12 so -- I mean I would assume some of the numbers</p> <p>13 and terms would have been discussed prior.</p> <p>14 Q. My next question was going to be, you</p> <p>15 know, which are most likely those terms that were</p> <p>16 negotiated?</p> <p>17 A. The percentages, number of rides.</p> <p>18 Q. All of the good stuff that is blacked</p> <p>19 out?</p> <p>20 A. Right, exactly, right.</p> <p>21 Q. Did A of A have any other agreements,</p> <p>22 whether written or unwritten, with Delta Fair,</p> <p>23 Incorporated with respect to the 2016 Delta Fair?</p> <p>24 A. No.</p>	<p style="text-align: right;">29</p> <p>1 Q. One of the things you were asked to talk</p> <p>2 about today in the deposition notice was the</p> <p>3 contracts with other operators such as Belle City</p> <p>4 Amusements, Prime Time Amusements.</p> <p>5 Are you prepared to talk about that</p> <p>6 today?</p> <p>7 A. Yes.</p> <p>8 Q. There is -- I have a copy here of the</p> <p>9 Belle City Independent Attraction Contract,</p> <p>10 copies for everyone else.</p> <p>11 (Whereupon, the above-mentioned document</p> <p>12 was marked as Exhibit 4 to the testimony of the</p> <p>13 witness, and is attached hereto.)</p> <p>14 Q. (BY MR. TEITENBERG) Do you recognize</p> <p>15 this contract?</p> <p>16 A. Yes.</p> <p>17 Q. Tell the jury what this contract is for?</p> <p>18 A. It's a contract that we use for when we</p> <p>19 subcontract amusement rides at our fairs.</p> <p>20 Q. So this is a contract whose form would</p> <p>21 have been essentially drafted by A of A?</p> <p>22 A. Yes, that's correct.</p> <p>23 Q. Is it typical to other contracts that</p> <p>24 you do with other independent attraction</p>

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<p style="text-align: right;">30</p> <p>1 operators?</p> <p>2 A. Yes.</p> <p>3 Q. You would have a similar contract like</p> <p>4 this in 2016 with Prime Time Amusements, LLC?</p> <p>5 A. If we have one, if we had one, I don't</p> <p>6 know if we do.</p> <p>7 Q. Sometimes it's an oral agreement?</p> <p>8 A. Correct.</p> <p>9 Q. Did A of A have any other oral agreement</p> <p>10 with Belle City Amusements?</p> <p>11 A. Besides for this event, no, for this</p> <p>12 contract, no.</p> <p>13 Q. Outside of what's in the contract, does</p> <p>14 Amusements of America have any rules or</p> <p>15 guidelines that subcontractors have to abide by?</p> <p>16 A. Outside of the contract, I guess it</p> <p>17 depends. Would you be referring to like</p> <p>18 generators and so forth or --</p> <p>19 Q. Well, anything -- anything really.</p> <p>20 A. Well, I guess for a generator aspect,</p> <p>21 typically our policy is if you bring eight to ten</p> <p>22 or more rides, we would request electrical power</p> <p>23 as well to help power the equipment.</p> <p>24 Q. Okay. And by electric power, you mean</p>	<p style="text-align: right;">31</p> <p>1 generators?</p> <p>2 A. Yeah. That's not in the contract.</p> <p>3 Q. Okay. One of the things you were</p> <p>4 designated to speak about was the -- the TOSHA</p> <p>5 investigation that the State of Tennessee</p> <p>6 performed?</p> <p>7 A. Yes.</p> <p>8 Q. Have you read that TOSHA report?</p> <p>9 A. Yes.</p> <p>10 Q. And was there anything in that report</p> <p>11 that is inaccurate?</p> <p>12 MR. GRIFFEE: Object to the form.</p> <p>13 THE WITNESS: Do I still answer?</p> <p>14 MR. GRIFFEE: Yeah.</p> <p>15 THE WITNESS: The facts were laid out to</p> <p>16 my understanding, not being there, accurately.</p> <p>17 BY MR. TEITENBERG:</p> <p>18 Q. The facts are inaccurate?</p> <p>19 A. No. The facts are accurate to my</p> <p>20 understanding.</p> <p>21 Q. Oh, okay. Is there anything that A of A</p> <p>22 believes is inaccurate in that report?</p> <p>23 MR. GRIFFEE: Same objection.</p> <p>24 A. Based upon what the two penalties that</p>
<p style="text-align: right;">32</p> <p>1 were listed, they were accurate.</p> <p>2 MR. TEITENBERG: And I have another</p> <p>3 document I would like to make an exhibit.</p> <p>4 (Whereupon, the above-mentioned</p> <p>5 document was marked as Exhibit 5 to the testimony</p> <p>6 of the witness, and is attached hereto.)</p> <p>7 BY MR. TEITENBERG:</p> <p>8 Q. These documents were produced by</p> <p>9 Amusements of America. Are you familiar with</p> <p>10 them?</p> <p>11 A. These documents?</p> <p>12 Q. Yes.</p> <p>13 A. Oh, you mean the actual -- yes, we</p> <p>14 turned it in, yes. We didn't create the</p> <p>15 documents, right.</p> <p>16 Q. Right.</p> <p>17 A. Okay.</p> <p>18 Q. I imagine these were created by the</p> <p>19 Department of Labor and Workforce Development of</p> <p>20 the State of Tennessee.</p> <p>21 A. Yes, yes.</p> <p>22 Q. And it indicates that there were fees</p> <p>23 and penalties assessed?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">33</p> <p>1 Q. And there's -- the second page of this</p> <p>2 exhibit is a check from Amusements of America to</p> <p>3 the Treasurer, State of Tennessee in the amount</p> <p>4 of forty-five hundred dollars?</p> <p>5 A. Yes.</p> <p>6 Q. Is that the fine that Amusements of</p> <p>7 America paid?</p> <p>8 A. Yes.</p> <p>9 Q. Did Amusements of America make any</p> <p>10 attempt to dispute or appeal these citations?</p> <p>11 A. I made an attempt to dispute it when the</p> <p>12 investigator called me and asked what we were</p> <p>13 going to do with this report.</p> <p>14 Q. Can you tell the jury a little bit about</p> <p>15 that?</p> <p>16 A. I was called right around -- right</p> <p>17 before Christmastime when I got this report. And</p> <p>18 he said, I'm assuming you got the report, you</p> <p>19 know you have to pay -- you have thirty days to</p> <p>20 pay the fine.</p> <p>21 And I said it was, you know, a lot of</p> <p>22 money and could I do something else, a plan or</p> <p>23 something, because we are closed at that time of</p> <p>24 year.</p>

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<p style="text-align: right;">42</p> <p>1 Q. And then how about the profits, do you</p> <p>2 know how much of that is profit?</p> <p>3 A. About -- I think it's about three or</p> <p>4 four hundred thousand.</p> <p>5 Q. I want to go back and talk about you</p> <p>6 personally for a moment.</p> <p>7 A. Okay.</p> <p>8 Q. Have you ever been charged with a crime?</p> <p>9 A. No.</p> <p>10 Q. I think that's all I have. Thank you.</p> <p>11 A. Thank you.</p> <p>12 THE WITNESS: Oh, I'm sorry.</p> <p>13 EXAMINATION</p> <p>14 Q. (BY MS. TULLIS) Good afternoon. My name</p> <p>15 is Mary Wu Tullis and I represent Belle City</p> <p>16 Amusements, Inc.</p> <p>17 If I can refer you to the notice, the</p> <p>18 30(b)(6) notice, that has been marked as an</p> <p>19 exhibit previously?</p> <p>20 A. Okay.</p> <p>21 Q. I want to ask you specifically about</p> <p>22 topic five, which says A of A's contracts and any</p> <p>23 other arrangements or agreements it had with</p> <p>24 Belle City Amusements, Inc. regarding the 2016</p>	<p style="text-align: right;">43</p> <p>1 Delta Fair and Music Festival.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. We have also marked as Exhibit 4 what is</p> <p>5 called the Independent Attraction Contract.</p> <p>6 Do you see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Besides the Independent Attraction</p> <p>9 Contract, are there any other contracts between</p> <p>10 Amusements of America and Belle City Amusements,</p> <p>11 Inc. regarding the 2016 Delta Fair and Music</p> <p>12 Festival?</p> <p>13 A. No, ma'am.</p> <p>14 Q. Are there any other arrangements between</p> <p>15 Amusements of America and Belle City Amusements,</p> <p>16 Inc. regarding the 2016 Delta Fair and Music</p> <p>17 Festival?</p> <p>18 A. I'm assuming we're talking about</p> <p>19 generators again.</p> <p>20 Q. No. Well, I'm not asking specifically</p> <p>21 about generators. I'm asking sort of more</p> <p>22 generally, are there any other arrangements</p> <p>23 between Amusements of America and Belle City</p> <p>24 Amusements, Inc. regarding the 2016 Delta Fair</p>
<p style="text-align: right;">44</p> <p>1 and Music Festival?</p> <p>2 MR. GRIFFEE: I will object to the form.</p> <p>3 A. Any other arrangements, which would be</p> <p>4 what exactly?</p> <p>5 Q. How would you -- any other agreements</p> <p>6 or --</p> <p>7 A. Nothing written, nothing written, no.</p> <p>8 Q. Are there oral arrangements or</p> <p>9 agreements between Amusements of America and</p> <p>10 Belle City Amusements, Inc. regarding the 2016</p> <p>11 Delta Fair and Music Festival?</p> <p>12 A. Yes.</p> <p>13 Q. What are those oral agreements?</p> <p>14 A. One would be the generator for the site,</p> <p>15 for usage during the fair. Let's see what else,</p> <p>16 they would have to pay, I don't know if it's in</p> <p>17 here or not, they would have to pay for trailer</p> <p>18 rent for their employees and RVs.</p> <p>19 They would have to have the ride permits</p> <p>20 for their rides. I'm not sure if that's in there</p> <p>21 or not. I'm just -- but that's part of the</p> <p>22 agreement.</p> <p>23 Q. Any other oral agreements that</p> <p>24 Amusements of America has with Belle City</p>	<p style="text-align: right;">45</p> <p>1 Amusements, Inc. regarding the 2016 Delta Fair</p> <p>2 and Music Festival?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. And those three oral agreements that we</p> <p>5 talked about, they are not in the Independent</p> <p>6 Attraction Contract that has been marked as</p> <p>7 Exhibit 4, are they?</p> <p>8 A. I don't believe they are.</p> <p>9 Q. Is it Amusements of America's position</p> <p>10 that the Independent Attraction Contract that has</p> <p>11 been marked as Exhibit 4 did not contain any</p> <p>12 provision that requires Belle City to supply</p> <p>13 generators?</p> <p>14 MR. GRIFFEE: Object to the form.</p> <p>15 A. The written contract does not state</p> <p>16 anything about generators.</p> <p>17 Q. And you mentioned that Amusements of</p> <p>18 America had a requirement if a ride operator was</p> <p>19 going to bring eight to ten rides that they would</p> <p>20 request electrical power?</p> <p>21 A. Correct.</p> <p>22 Q. Is that a written requirement?</p> <p>23 A. Generally accepted practice that we use.</p> <p>24 Q. Okay. And how is that practice</p>

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<p style="text-align: right;">46</p> <p>1 communicated to ride operators?</p> <p>2 A. When we talk about the ride lineup they</p> <p>3 were in. So we had discussed with Belle City</p> <p>4 this ride lineup. So at that point, and also</p> <p>5 obviously the monetary compensation, our</p> <p>6 percentage, that would have been discussed at</p> <p>7 that time.</p> <p>8 Q. Is it -- is the requirement to bring a</p> <p>9 generator to power all eight to ten rides?</p> <p>10 A. Logistically it's for power usage. It</p> <p>11 doesn't have -- they wouldn't specifically power</p> <p>12 their own rides. But because of that additional</p> <p>13 power of the eight rides needed, we need that</p> <p>14 generator.</p> <p>15 So it's needed in the whole scope of the</p> <p>16 fair, but it would not be used -- isolated with</p> <p>17 their specific rides.</p> <p>18 Q. So would it be fair to say that the</p> <p>19 requirement is one generator from the ride</p> <p>20 operators who are going to bring eight to ten</p> <p>21 rides?</p> <p>22 A. Correct. If they brought sixteen, they</p> <p>23 would be asked for two generators.</p> <p>24 Q. Are ride operators compensated for</p>	<p style="text-align: right;">47</p> <p>1 bringing a generator when they bring eight to ten</p> <p>2 rides?</p> <p>3 A. No, but we pay for all the fueling so</p> <p>4 they have no additional expense.</p> <p>5 Q. At what point is the requirement to</p> <p>6 bring a generator if a ride operator is going to</p> <p>7 bring eight to ten rides discussed?</p> <p>8 A. During the time we negotiate for the</p> <p>9 number of rides and the percentage.</p> <p>10 Q. Are there any situations where a</p> <p>11 generator to power -- or a generator for</p> <p>12 electrical use at a fair is not needed from a</p> <p>13 ride operator who is going to bring eight to ten</p> <p>14 rides?</p> <p>15 A. It's possible based upon the layout, the</p> <p>16 size of the grounds. If it's more compact, it's</p> <p>17 possible that you could get by with one less</p> <p>18 generator, but it's possible.</p> <p>19 Q. So it's not, I guess, a per se or an</p> <p>20 automatic rule that any ride operator --</p> <p>21 A. Sorry.</p> <p>22 Q. Let me repeat this for the record. So</p> <p>23 it's possible that if a ride operator brings</p> <p>24 eight to ten rides they could -- they would have</p>
<p style="text-align: right;">48</p> <p>1 some situations where they wouldn't be required</p> <p>2 to bring a generator?</p> <p>3 MR. GRIFFEE: Object to the form.</p> <p>4 A. We have never not asked for a generator.</p> <p>5 Always be safe than sorry.</p> <p>6 Q. Have you -- have there been situations</p> <p>7 where the generator that's brought by a ride</p> <p>8 operator who brings eight to ten rides is not</p> <p>9 used?</p> <p>10 A. Possibly.</p> <p>11 Q. Has that happened at the 2016 Delta</p> <p>12 Fair?</p> <p>13 A. No.</p> <p>14 Q. Has that happened at any Delta Fair?</p> <p>15 A. No.</p> <p>16 Q. When a ride operator who is bringing</p> <p>17 eight to ten rides to a fair is required to bring</p> <p>18 a generator, are there any other requirements</p> <p>19 asked of that ride operator?</p> <p>20 MR. GRIFFEE: Object to the form.</p> <p>21 A. Any other requirements asked of that</p> <p>22 ride operator? I mean, yeah, I guess, yes, but</p> <p>23 it's generally they have to wear our uniforms.</p> <p>24 They have to follow the hours posted of the fair,</p>	<p style="text-align: right;">49</p> <p>1 so they have to -- they have to honor the tickets</p> <p>2 that we provide for the fair, including</p> <p>3 complimentary passes, so they ride people for</p> <p>4 free.</p> <p>5 Q. And I'm sorry. That was probably a</p> <p>6 poorly worded question.</p> <p>7 What I wanted to ask is, are there any</p> <p>8 other requirements relating to the generator that</p> <p>9 are imposed on a ride operator who is required to</p> <p>10 bring one?</p> <p>11 MR. GRIFFEE: Same objection. Go ahead.</p> <p>12 A. Being it's their equipment, we expect --</p> <p>13 we assume they expect they will handle it,</p> <p>14 maintain it, operate it.</p> <p>15 Q. But Amusements of America does not place</p> <p>16 any requirements on that ride operator with</p> <p>17 respect to the generator, aside from bringing it</p> <p>18 to the fair?</p> <p>19 MR. GRIFFEE: Object to the form.</p> <p>20 A. Well, I mean, requirements like I said</p> <p>21 would be to operate it and maintain it.</p> <p>22 Generators, you have to change fuel filters, oil</p> <p>23 changes, just like a car on a regular basis.</p> <p>24 Q. Is the fuel that Amusements of America</p>